IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

OP.No. 20689 of 2000(K)

PETITIONER:

1.V.SUKUMARAN NAIR, GRADE II WORKER,
MINOR IRRIGATION SECTION, CHARUMMOODU, PANDALAM.

2.N.JANARDHANAN NAIR, GRADE II WORKER,
MINOR IRRIGATION SECTION, CHARUMMOODU, PANDALAM.

3.T.N.RAVEENDRA KURUP, GRADE II WORKER,
MINOR IRRIGATION SECTION, CHARUMMOODU,PANDALAM.

4.S.SANKARANKUTTY NAIR, ASSISTANT OPERATOR,
MINOR IRRIGATION SECTION, MAVELIKKARA.

5.K.G.MATHEW, GRADE II WORKER, MINOR IRRIGATION SECTION,
ADOOR.

6.P.K.DEVARAJAN, GRADE II WORKER,
MINOR IRRIGATION SECTION, ADOOR.

7.P.C.SASIDHARAN, GRADE II WORKER, MINOR IRRIGATION
SECTION, ADOOR.

BY ADV. SRI.P.SANTHOSH KUMAR (PANAMPALLI NAGAR)
SRI.T.A.RAJAN

RESPONDENTS:

1.STATE OF KERALA, REP. BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2.THE CHIEF ENGINEER, IRRIGATION DIVISION,
THIRUVANANTHAPURAM.

3.THE EXECUTIVE ENGINEER, MINOR IRRIGATION DIVISION,
CHENGANNUR.

4.THE ASST.EXECUTIVE ENGINEER, MINOR IRRIGATION DIVISION,
CHENGANNUR.

5.THE EXECUTIVE ENGINNER, MINOR IRRIGATION DIVISION, PATHANAMTHITTA.

6.THE ASSISTANT EXECUTIVE ENGINEER, MINOR IRRIGATION SUB DIVISION, ADOOR.

BY GOVERNMENT PLEADER SMT.K.R.DEEPA.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 07/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.34689/2000 IN O.P.NO.20689/2000

DISMISSED

7..2..2007. SD/- KURIAN JOSEPH, JUDGE.

A P P E N D I X

PETITIONER'S EXHIBITS :

EXT.P1 : TRUE COPY OF G.O.(P) NO.17/99/IRD. DT. 18.3.1999 ISSUED BY THE IRRIGATION (A) DEPARTMENT.

EXT.P2 : TRUE COPY OF G.O.(P) NO.11/2000/IRRIGATION DT. 9.2.2000 OF THE IRRIGATION (A) DEPARTMENT.

EXT.P3 : TRUE COPY OF ORDER NO.A3-1466/86 DT. 6.7.2000 OF THE 4TH RESPONDENT.

TGS

KURIAN JOSEPH, J.

O.P.No.20689 of 2000

Dated 7th February, 2007.

J U D G M E N T

The writ petition is filed mainly with the following prayers :-

> "(i)Issue a writ of certiorari or any other appropriate writ order or direction quashing Ext.P2 order which restricts financial benefits with effect from 18.3.1999 in so far as the petitioners are concerned as arbitrary and illegal.
>
> (ii) Issue a writ of mandamus or any other appropriate writ, order or direction declaring that the petitioners are entitled for the benefit they have been granted pursuant to Ext.P1 and not liable to have any recovery from their salary."

In Ext.P1 Government Order dated 18.3.1999, the following benefits were granted :-

> "Government have examined the matter in detail and are pleased to extend the benefit of time bound grade promotion to the regularised CLR/SLR workers counting their CLR/SLR service prior to their absorption into regular service. The service prior to their regularisation shall be reckoned from the seniority list of CLR/SLR workers as number of days they had worked and 240 days of work shall be treated as one year for the purpose."

There was no restriction as to the date of implementation of the order. Since the Government intended to confer a benefit in respect of CLR/SLR service rendered by the concerned employees,

it can only be taken that it has no such restriction and the benefit of service without any restriction as to the date had to be given. However, subsequently, as per Ext.P2 Government Order dated 9.2.2000, the Government clarified that the benefits will be given only from the date of the order, viz., 18.3.1999. In the counter affidavit, it is clearly stated that "Subsequently as per G.O.(P) No.11/2000/IrD. dated 9.2.2000 Government have clarified that the CLR/SLR workers are eligible for grade fixation from the date on which the incumbent becomes eligible for the same and the back arrears on the basis of such fixation will be with effect from 18.3.1999." By the time such clarification was issued, the petitioners had already been given the benefit of Ext.P1. The clarification by imposing a restriction having been introduced only by Government Order dated 9.2.2000, the same can have effect only in respect of those fixation made after 9.2.2000. Thus it is declared that in the case of those petitioners in whose case fixation on the basis of Ext.P1 without any restriction as to the date has already been made prior to 9.2.2000, there shall be no recovery, since at the time of fixation Ext.P1 could have been interpreted only that way. If any amounts have been withheld on the above basis, the same shall be refunded within two months

from the date of production of a copy of the judgment.

The writ petition is disposed of as above.

KURIAN JOSEPH, JUDGE.

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KURIAN JOSEPH, J

O.P.No.20689 of 2000(K)

J U D G M E N T

Dated 7th February, 2007.